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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1045

CORNING GLASS WORKS,
Petitioner,

v.

FISCHER & PORTER COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioner has requested this Court to grant a Writ of Certiorari to review the judgment of the court below which held that petitioner cannot be "heard to complain that the trial court erred in submitting the case to the jury" when petitioner failed to make a motion for a directed verdict, or for judgment notwithstanding the verdict or for a new trial (2A). The court below also held that petitioner cannot be heard to complain in regard to the court's charges to the jury since the "claimed errors either were not objected to Fed. R. Civ. P. 51, or correctly stated the governing law" (2A).

BLEED THROUGH

The petitioner is asking this Court to decide factually pregnant questions of non-joinder or mis-joinder of inventorship and other highly technical questions concerning the effective date of prior art. It is difficult to imagine questions less suitable for consideration by this Court than those presented by petitioner.

Statement

Respondent does not accept petitioner's statements and characterization of the record, but since the merits of the petition are not affected, respondent does not burden this brief in opposition by a detailed statement.

This action began in the trial court as an action for nonpayment of royalties and breach of a patent license contract in which petitioner, The Corning Glass Works, defended on the ground that the licensed patent was invalid for a multiplicity of reasons, and that its slightly modified version of a royalty bearing product avoided the patent. The action was tried before a jury, and the jury rendered a general verdict for respondent, Fischer & Porter Company.

The parties stipulated to a eight-man-jury trial and agreed that the case should be submitted for a general verdict. The very questions presented to this Court were presented to the jury, and the jury rendered a verdict in favor of respondent in all respects.

Petitioner, Corning, did not move for a directed verdict at the conclusion of respondent's case or at the conclusion of all the evidence. After receiving the unfavorable verdict,

it did not move for a judgment n.o.v. Instead, Corning took an appeal from the judgment on the verdict and attempted to reargue all the issues *de novo* before the Court of Appeals. Simply and colloquially stated, Corning gambled on the jury verdict, lost, and asked the Court of Appeals to cover its bet. It lost again before the Court of Appeals and now asks this Court to overturn the verdict.

Reason for Opposition

The issues of non-joinder and mis-joinder of inventorship, and the issue of whether a continuation-in-part patent application is entitled to the filing date of the parent application are by their very nature highly technical questions requiring a detailed understanding of facts. The facts were duly presented to the jury and the jury rendered a verdict in favor of respondent.

There is no dispute between the circuits in regard to the issues which petitioner would like this Court to consider *de novo,* and the issues are substantially devoid of any public interest.

The presentation of the "factual record" by petitioner, Corning, is in fact a tendentious view of respondent's counsel and in many respects is a distortion of the record. The same type of argument was presented to the Court of Appeals and from that Court's opinion, it is apparent that the Court saw through the distorted presentation of so-called facts. Indeed, one can glean from the Court's judgment that little or no respect was accorded to substantially the same argument which is presented to this Court.

BLEED THROUGH

It would, we submit, unduly burden this brief and belabor the Court to engage in an extensive factual presentation to rebut the allegations of so-called facts presented by petitioner.

In view of the almost total lack of any public interest inherent in this case, the lack of any inconsistencies between the circuits in regard to the issues, and in view of the highly technical nature of the issues involved, it is hard to imagine a case less suited for review by this Court.

Accordingly, the Petition should be denied.

Respectfully submitted,

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